

Neifeld Docket No: CAT/29US-SCROCO

Application/Patent No: 09/401,939

USPTO CONFIRMATION NO: 5333

File/Issue Date: 9/23/1999

Inventor/title: Scroggie/System and Method for Providing Shopping Aids and Incentives to Customers Through a Computer Network

Examiner/ArtUnit: Janvier/3622

BPAI DOCKET NO: 2008-4478

EX PARTE SCROGGIE

**37 CFR 1.7(c) FILING RECEIPT AND TRANSMITTAL LETTER WITH
AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

**1. THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FEES
WHICH MAY BE REQUIRED, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT
ACCOUNT NUMBER 50-2106.**

2. FEES (PAID HERewith BY EFS CREDIT CARD SUBMISSION) \$: 400

A. CLAIMS FEES

0.00 \$ - (claims previously paid for; currently present; \$50 per addl. claim over 20.)

0.00 \$ - (independent previously paid for; currently present; \$200 per addl. claim over 3)

B. OTHER FEES \$:

\$400. 37 CFR 41.20(A) fee

3. THE FOLLOWING DOCUMENTS ARE SUBMITTED HERewith:
PETITION UNDER 37 CFR 41.3/1.183

DATE: 5-20-2010

SIGNATURE: /RichardNeifeld#35,299/

RICHARD NEIFELD

Printed: May 20, 2010 (12:59pm)

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37 CFR 41.3/1.183 PETITION

The appellant requests consideration of this petition.

I. STATEMENT OF THE RELIEF REQUESTED

The appellant request the Director to instruct the panel to make of record that portion of the American Heritage Dictionary of the English Language (4th ed. 2000), allegedly defining "personal computer" as "a computer built around a microprocessor for use by an individual." The portion of the foregoing dictionary supporting that assertion of fact includes the title page and copyright page for identification purposes and the page or pages containing the complete definition of "personal computer."

II. STATEMENT OF MATERIAL FACTS

The panel decision dated 5/4/2010 affirms in part the rejections of record primarily on the basis of a definition of "personal computer" relied upon by the panel.

The panel decision dated 5/4/2010 alleged as fact, and find of fact (FF) 02, that the American Heritage Dictionary of the English Language (4th ed. 2000) defined personal computer to mean "a computer built around a microprocessor for use by an individual." Decision page 6 (D:6).

The panel decision did not include quotation marks in its definition in its finding of facts section for "personal computer". D:6.

The panel decision did not include evidence showing that its finding of fact (finding that the American Heritage Dictionary of the English Language (4th ed. 2000) defining "personal computer" as "a computer built around a microprocessor for use by an individual.") was accurate.

Instead, the decision include a footnote to the American Heritage Dictionary of the English Language (4th ed. 2000), footnote 2. D:6.

The American Heritage Dictionary of the English Language (4th ed. 2000) is not readily available to the undersigned.

The American Heritage Dictionary of the English Language (current online version) contains the following definition of "personal computer":

NOUN: Abbr. PC A computer built around a microprocessor for use by an individual, *as in an office or at home or school*. [Italics add to emphasis the difference from the definition asserted in FF 02 in the decision.]

(Specifically, a search for "personal computer" definitions on <http://www.onelook.com/> results in the web page <http://www.onelook.com/?w=personal+computer&ls=a>, which web page lists 22 links for definitions of "personal computer". The second listed link has the descriptive text

"personal computer: American Heritage Dictionary of the English Language [home, info] " and links to the web page
<http://education.yahoo.com/reference/dictionary/entry/personal%20computer>

III. REASONS WHY THE RELIEF REQUESTED SHOULD BE GRANTED

A. SUBSTANTIVE BASIS FOR RELIEF

The alleged error is not harmless. The panel decision is procedurally improper because it fails to provide evidence supporting its assertion of fact, and its assertion of fact is fundamental to the decision on appeal. The appellants have reason to believe that the definition of "personal computer" in FF02 is a truncated version of the actual dictionary definition from which it purportedly was taken. "An abuse of discretion occurs if a decision is based on... a factual finding is not supported by substantial evidence, In re Gartside, 203 F.3d 1305, 1315-16 (Fed. Cir. 2000)." Arnold v. Dudas, 362 F.3d 1338, *; 2004 U.S. App. LEXIS 5513, **; 70 USPQ2d 1311 (Fed. Cir. 2004).

Here, an abuse of discretion occurred because the panel's alleged evidence supporting the finding of fact, the 4th ed. 2000, of the Dictionary, is not of record and therefore "not supported by substantial evidence". Moreover, the asserted definition, allegedly based upon a specific piece of evidence, is inconsistent with the appellants best available evidence (the year 2010 version of the Dictionary) of what that specific piece of evidence would show.

The appellants request for rehearing identifies and requests the panel to provide the necessary evidence. However, as providing evidence is a procedural matter, the undersigned files this petition as well, for that relief.

As an aside, the appellant notes that the panel definition is clearly inconsistent with the common understanding of "personal computer". As an example, consider any modern automobile. Modern automobiles are computerized and built around microprocessors for example to control gas flow to the pistons, and they are used by people. However, no one would consider a modern automobile to be a personal computer.

B. PROCEDURAL BASIS FOR RELIEF

37 CFR 41.3(e)(1) specifies that time for taking is 14 days from the date of the action form which the party is requesting relief, or "as the Board may authorize in writing". The decision is dated 5/4/2010. This petition is being filed 5/20/2010, which is 16 days from the date of the panel decision.

The undersigned requests that the Director either authorize the petition in its decision on

petition, or excuse the 2 days of tardiness in the interests of justice.

The petition should be authorized because the 2 day delay causes no harm to the panel in its review of the request for rehearing because that request was filed 5/14, only 4 days ago, and that request specifically notes the issue for petition and that a petition would be filed. Accordingly, the request placed the members of the panel on notice, and no substantial time has elapsed prejudicing the panels decision on the request for rehearing.

Granting the decision is clearly in the interests of justice because, as shown in the request for rehearing narrow dictionary definition of "personal computer", if applied to construe the claims involved in the appeal, would have resulted in reversal of all rejections of record. The request for rehearing is incorporated by reference to the extent the Director deems it necessary to review that request to see why this assertion (of reversal of all rejections of record) is correct.

5/20/2010

DATE

Respectfully Submitted,

/RichardNeifeld#35,299/

Richard A. Neifeld

Attorney of Record

Registration No. 35,299

RAN/GP

Printed: May 20, 2010 (12:59pm)

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